

## STATE OF SOUTH CAROLINA

## (Caption of Case)

State Universal Service Support of Basic Local  
Service Included in a Bundled Service Offering or  
Contract Offering

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

## COVER SHEET

## DOCKET

NUMBER: 2009 - 326 - C

(Please type or print)

Submitted by: Margaret M. Fox, EsquireSC Bar Number: 65418Address: McNair Law Firm, P. A.Telephone: 803-799-9800P. O. Box 11390Fax: 803-753-3219Columbia, SC 29211

Other: \_\_\_\_\_

Email: pfox@mcnair.net

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☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: \_\_\_\_\_

## INDUSTRY (Check one)

## NATURE OF ACTION (Check all that apply)

- ☐ Electric  
☐ Electric/Gas  
☐ Electric/Telecommunications  
☐ Electric/Water  
☐ Electric/Water/Telecom.  
☐ Electric/Water/Sewer  
☐ Gas  
☐ Railroad  
☐ Sewer  
☒ Telecommunications  
☐ Transportation  
☐ Water  
☐ Water/Sewer  
☐ Administrative Matter  
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☐ Answer  
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ATTORNEYS

Margaret M. Fox

pfox@mcnair.net  
T (803) 799-9800  
F (803) 753-3219

November 13, 2009

Charles L. A. Terreni  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
101 Executive Center Drive  
Suite 100  
Columbia, South Carolina 29210

Re: State Universal Service Support of Basic Local  
Service Included in a Bundled Service Offering  
or Contract Offering  
**Docket No. 2009-326-C**

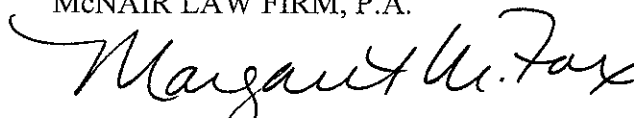
Dear Mr. Terreni

Enclosed for filing on behalf of the South Carolina Telephone Coalition please find the Surreply Testimony of Glenn H. Brown and the Surreply Testimony of H. Keith Oliver in the above-referenced docket. By copy of this letter and Certificate of Service, a copy of Mr. Brown's Testimony and a copy of Mr. Oliver's Testimony is being served on all parties of record.

Thank you for your assistance.

Sincerely,

McNAIR LAW FIRM, P.A.



Margaret M. Fox

McNair Law Firm, P. A.  
The Tower at 1301 Gervais  
1301 Gervais Street, 11th Floor  
Columbia, SC 29201

Mailing Address  
P.O. Box 11390  
Columbia, SC 29211

mcnair.net

MMF:rw  
Enclosure

cc: Parties of Record

BEFORE THE  
PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

State Universal Service Support of Basic     )  
Local Service Included in a Bundled         )  
Service Offering or Contract Offering         )

Docket No. 2009-326-C

**SURREPLY TESTIMONY OF**  
**GLENN H. BROWN**  
**ON BEHALF OF THE**  
**SOUTH CAROLINA TELEPHONE COALITION**

**November 13, 2009**

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1    **I.    INTRODUCTION**

2    **Q.    Please state your name and business address.**

3    **A.**    My name is Glenn H. Brown, and my business address is PO Box 21173, Sedona,  
4           Arizona 86341.

5    **Q.    Have you previously filed testimony in this proceeding?**

6    **A.**    Yes. On October 9, 2009 I filed direct testimony in this proceeding on behalf of  
7           the South Carolina Telephone Coalition (SCTC).

8    **Q.    What is the purpose of your reply testimony?**

9    **A.**    The purpose this testimony is to respond to the testimony of Mr. Joseph Gillan  
10          filed on behalf of the South Carolina Cable Television Association, CompSouth,  
11          TW Telecom of South Carolina LLC, and NuVox Communications, Inc.. In his  
12          testimony, Mr. Gillan has called for the elimination of SCUSF support for lines  
13          that are included in service bundles or are offered under contract.

14   **Q.    Will you also be replying to the testimony filed by Ms. Hipp and Ms.**  
15          **Prockish?**

16   **A.**    I have reviewed the reply testimony of Ms. Dawn Hipp of the Office of  
17          Regulatory Staff, and Ms. Ann C. Prockish on behalf of United Telephone  
18          Company of the Carolinas, LLC d/b/a CenturyLink. Both of these witnesses have  
19          reached the same conclusion that I have – that the offering of service bundles or  
20          contracts should not impact receipt of funds from the SCUSF. While I will be  
21          referring to items in their testimony to reinforce my arguments, I will focus my  
22          reply testimony on why Mr. Gillan has reached incorrect conclusions in his  
23          testimony that would produce results that would be harmful to the public interest.

1    **Q.**     **Why has Mr. Gillan reached the incorrect conclusion that COLRs offering**  
2           **service bundles or contracts should not be eligible for the receipt of SCUSF**  
3           **support?**

4    **A.**     Mr. Gillan makes a number of factually incorrect assumptions that allow him to  
5           reach his erroneous conclusions. Among the *factually incorrect* assumptions that  
6           Mr. Gillan has made in his direct testimony are:

- 7           1. COLRs cannot receive support for basic local service when it is provided as  
8           part of a bundled or contract offering;
- 9           2. The basic local service provided by COLRs is “deregulated” when service  
10          bundles are offered;
- 11          3. The SCUSF is a “tax” to support unregulated bundles that can be offered at  
12          market prices;
- 13          4. The SCUSF will somehow “expand” if support continues to be provided to  
14          basic local service when it is provided as part of a bundled or contract  
15          offering;
- 16          5. There is no difference between the costs of RLECs to serve densely populated  
17          towns vs. the cost to serve sparsely populated rural areas; and
- 18          6. The calculation of a “per-line” SCUSF metric means that each and every line  
19          served by a COLR receives an equal amount of “subsidy.”

20

1    **II.    COLRs ARE ENTITLED TO RECEIVE SCUSF SUPPORT WHEN THEY**  
2    **PROVIDE “BASIC EXCHANGE LOCAL TELECOMMUNICATIONS**  
3    **SERVICE”**  
4

5    **Q.    How does Mr. Gillan reach his erroneous conclusion that SCUSF support**  
6    **cannot be provided to basic local service if it is provided as part of a service**  
7    **bundle or service contract?**

8    **A.**    As should always be the case, he begins with the relevant law, which in this case  
9    is Section 58-9-280(E) – but from there he makes three fundamental errors.  
10   Section 58-9-280(E) states, in part:

11        In continuing South Carolina’s commitment to universally available *basic local*  
12        *exchange telephone service* at affordable rates and to assist with the alignment of  
13        prices and/or cost recovery with costs, and consistent with applicable federal  
14        policies, the commission shall establish a universal service fund (USF) for  
15        distribution to a carrier(s) of last resort. ... *These guidelines must not be*  
16        *inconsistent with applicable federal law...* (Emphasis Added)  
17

18        The first mistake that Mr. Gillan makes is placing his emphasis on the single word  
19        “basic”<sup>1</sup> in the above citation. Mr. Gillan conveniently ignores that this word is  
20        part of the phrase “basic local exchange telephone service,” which is specifically  
21        defined in Section 58-9-10(9), and consists of access to a number of specific  
22        telecommunications functionalities.<sup>2</sup> The second mistake that Mr. Gillan makes is  
23        to confuse his conception of “*basic*” with the statutory definition of a “*stand-*  
24        *alone*” offering. Under the bundling rules in 58-9-285(A)(1)(a)(ii), “each  
25        regulated product or service in the [bundled] offering [must be] available on a

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<sup>1</sup> See Gillan reply testimony at page 4 lines 6 and 11.

<sup>2</sup> Section 58-9-10(9) states “The term “basic local exchange telephone service” means for residential and single-line business customers, access to basic voice grade local service with touchtone, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent).

1 stand-alone basis under a tariff on file with the commission..”<sup>3</sup> In Mr. Gillan’s  
2 world, only a stand-alone offering containing the specific functionalities in 58-9-  
3 10(9), and only these functionalities, should be able to receive support from the  
4 SCUSF. This, of course, is not how the real world works. Very few customers  
5 subscribe to only the minimal functionalities defined in 58-9-10(9).<sup>4</sup> In actual  
6 practice, all residential and single-line business lines that contain these “basic  
7 local exchange telephone service” functionalities are eligible for SCUSF funding.

8 **Q. What is the third fundamental error that Mr. Gillan makes in his**  
9 **interpretation of Section 58-9-280(E)?**

10 **A.** He conveniently ignores the final requirement (as highlighted in my citation,  
11 above) that the application of the SCUSF must “not be inconsistent with” the  
12 application of the federal USF. Under the federal high-cost USF, all lines that  
13 include, at minimum, the required basic service functionalities are eligible for the  
14 receipt of federal high-cost USF support. The federal law makes no exclusion for  
15 lines that are part of a bundle or contract offering or lines that provide more than  
16 minimal basic service functionalities.

---

<sup>3</sup> Section 58-9-285(A)(1)(a)(iii) further provides that the qualifying LEC has a tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58-9-10(9).

<sup>4</sup> Even Mr. Gillan himself recognizes this fact. In testimony he filed in the original universal service proceeding he states “Although industry-wide statistics are not publicly available, data from BellSouth provides a telling picture of just how few customers purchase only basic local service. In response to an FCC data request in connection with the federal universal service proceeding, BellSouth released the revenue distribution of residential customers purchasing “local service” in October, 1994. The data showed that 94% of BellSouth’s residential customers paid more than the average basic rate.” Testimony of Joseph Gillan in Docket 97-239-C.



1    **Q.**    Has Mr. Gillan mis-stated the applicability of federal rules regarding  
2           support for lines that provide other services beyond basic local  
3           telecommunications service?

4    **A.**    Yes. On page 10 of his reply testimony he is very critical of ORS witness Ms.  
5           Hipp who referenced FCC language stating "the network is an integrated facility  
6           that may be used to provide both supported and non-supported services."<sup>5</sup> I agree  
7           with Ms. Hipp, and strongly disagree with Mr. Gillan regarding the FCC's  
8           determination that lines that support services in addition to the basic  
9           functionalities should be eligible for universal service support. In its 2001 Order  
10          implementing the rural telephone company USF recommendations of the Rural  
11          Task Force, the FCC clearly and unambiguously stated:

12               The public switched telephone network is not a single-use network.  
13               Modern network infrastructure can provide access not only to voice  
14               services, but also to data, graphics, video, and other services. High-  
15               cost loop support is available to rural carriers "to maintain existing  
16               facilities and make prudent facility upgrades." Thus, although the  
17               high-cost loop support mechanism does not support the provision of  
18               advanced services, our policies do not impede the deployment of  
19               modern plant capable of providing access to advanced services. Rural  
20               carriers may consider both their present and future needs in  
21               determining what plant to deploy, knowing that prudent investment  
22               will be eligible for support.<sup>6</sup>

23  
24          RLECs have successfully been using federal USF and SCUSF support to build  
25          and maintain networks capable of supporting both basic and advanced  
26          telecommunications services for many years. In its 2007 Recommendation on the

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<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, Released July 14, 2003, at ¶13.

<sup>6</sup> Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket 96-45, and Report and Order in CC Docket No. 00-256, Released May 23, 2001 at paragraph 200.

1 future of USF, the Federal-State Joint Board on Universal Service<sup>7</sup> applauded the  
2 use of universal service funds to create a broadband-capable network in rural areas  
3 stating:

4 A significant portion of the High Cost Loop Fund supports the capital  
5 costs of providing broadband-capable loop facilities for rural carriers.  
6 Under this system, rural LECs (RLECs) have done a commendable job  
7 of providing broadband to nearly all their customers. While this  
8 program may need adjustments, we recognize its effectiveness in  
9 maintaining an essential network for [C]OLRs and in deploying  
10 broadband.<sup>8</sup>

11  
12 If Mr. Gillan's view of the world had prevailed, these significant accomplishments  
13 in the deployment of RLEC networks to deliver both basic and advanced services  
14 to rural areas would not have been possible. While from a competitive standpoint  
15 this would have been very beneficial for his cable and CLEC clients, it would  
16 have been an absolute disaster for rural South Carolina consumers.

17 **Q. Are there additional areas where Mr. Gillan has misinterpreted the impact of**  
18 **federal rules and guidelines on the implementation of the SCUSF?**

19 A. Yes. In his reply testimony, Mr. Gillan is critical of both Mr. Oliver (page 14, line  
20 12) and me (page 17, line 2) for our statements that rural consumers should have  
21 access to services and rates that are reasonably comparable to those in urban areas.  
22 He bases his criticism on the basic definition in 58-9-10(16) that universal service  
23 means that consumers should have access to basic local exchange telephone  
24 service at "affordable rates." He conveniently ignores the clear and unmistakable  
25 language in 58-9-280(E), which more fully contains the statutory definition of the

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<sup>7</sup> This Joint Board was created by the Telecommunications Act of 1996, and includes four State Commissioners, three FCC Commissioners and a consumer advocate.

<sup>8</sup> *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, Recommended Decision, Released November 20, 2007, at paragraph 30.

1 SCUSF, and states that "These guidelines must not be inconsistent with applicable  
2 federal law." The applicable federal law is contained in Section 254 of the  
3 Telecommunications Act of 1996. Section 254(b)(3) clearly states:

4 Consumers in all regions of the nation, including low-income  
5 consumers and those in rural, insular, and high cost areas, should have  
6 access to telecommunications and information services, including  
7 interexchange services and advanced telecommunications services and  
8 information services, that are reasonably comparable to those services  
9 provided in rural areas and that are available at rates that are  
10 reasonably comparable to rates charged for similar services in urban  
11 areas.

12  
13 Section 254(b)(5) further states that:

14  
15 There should be specific, predictable and sufficient Federal *and State*  
16 mechanisms to preserve and advance universal service. (emphasis  
17 added)

18  
19 Once again, Mr. Gillan is dead wrong in his interpretation of applicable South  
20 Carolina and federal law.

21 **Q. What other errors has Mr. Gillan made in reaching his incorrect conclusion**  
22 **that basic local service should not be eligible for SCUSF when it is provided**  
23 **as part of a bundled service or contract offering?**

24 **A.** He ignores clear and specific language in the state law regarding the application of  
25 the SCUSF to bundled service offerings. The bundling rules contained in Section  
26 58-9-285(C) specifically and unambiguously state "Nothing in this section affects  
27 the commission's jurisdiction over distributions from the USF pursuant to Section  
28 58-9-280(E)." He likewise ignores the clear language in the recently passed  
29 "Consumer Choice and Technology Investment Act of 2009" (H. 3299) that states

1 for companies, such as SCTC members, who will not be electing the new  
2 deregulation regime:

3 C(11) ...Nothing contained in this section or any subsection shall affect  
4 the current administration of the state USF nor does any provision  
5 thereof constitute a determination or suggestion that only stand-alone  
6 basic residential lines should be entitled to support from the state USF.  
7

8 **III. THE SCUSF WILL NOT "EXPAND" TO SUPPORT SERVICE BUNDLES**  
9

10 **Q. Throughout his testimony, Mr. Gillan refers to the SCUSF somehow**  
11 **expanding if support continues to be provided to basic local exchange**  
12 **telephone service when it is provided as part of a bundled or contract**  
13 **offering. Does support of bundled or contract offerings expand the size of**  
14 **the fund?**

15 **A.** Absolutely not. Mr. Gillan's testimony repeatedly focuses on the fund somehow  
16 "expanding" when this is absolutely not the case.<sup>9</sup> SCUSF funding will not  
17 expand if bundled or contract lines continue to receive support. The purpose of  
18 the SCUSF is to replace, dollar-for-dollar, implicit support for high-cost areas that  
19 was previously recovered in overpriced access charges and other services, with  
20 explicit universal service support as required by the Telecommunications Act of  
21 1996 and related South Carolina statutes. Importantly, the rates containing the  
22 implicit subsidy were reduced by an equivalent amount when the SCUSF was  
23 implemented. The only conceivable circumstance in which the size of the fund  
24 would increase would be if a carrier came forward with cost studies that clearly  
25 identified additional implicit support, and, after a Commission proceeding to  
26 review and approve the new component of SCUSF, made equivalent reductions in

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<sup>9</sup> See Gillan reply testimony at page 2 line 9, page 7 line 7, page 11 line 17, and page 15 line 4.

1 the rates that had previously provided this implicit support. In actuality, if SCUSF  
2 support were to be reduced when a current customer chose to convert his or her  
3 service to a bundled offering, then the COLR would be short the amount of  
4 implicit support that they had previously exchanged for explicit SCUSF support.

5 **Q. Does the offering of service bundles and contracts “deregulate” the COLR’s**  
6 **provision of basic local service, as Mr. Gillan seems to suggest?**

7 **A.** No it does not. While the Commission cannot impose any requirements on the  
8 COLR regarding the terms, conditions and rates of the service bundle or contract,  
9 the COLR is still obligated to make available on a stand-alone basis, under tariff,  
10 each of the products and services that are offered in the bundle, and is still  
11 required to provide service throughout its designated service territory.  
12 Furthermore, the COLR must stand ready to take back any customer who had  
13 chosen the services of a competitive provider but later decided to come back.

14 **Q. In his reply testimony, Mr. Gillan refers to the SCUSF as a “tax.” Is the**  
15 **SCUSF a tax?**

16 **A.** The SCUSF is not a “tax.” As the implicit support was removed from rates, and  
17 the high-cost recovery that it had accomplished was replaced with explicit  
18 universal service support, equal rate reductions were made in the services that had  
19 previously provided this support. This replacement of implicit support with  
20 explicit support has greatly benefited consumers and has facilitated the  
21 development of competition in South Carolina.

22

1   **Q.   How has the replacement of implicit support with explicit support benefited**  
2       **consumers and competition?**

3   **A.**   The removal of implicit support was specifically directed by Congress in the  
4       Telecommunications Act of 1996, and by the South Carolina General Assembly in  
5       its companion legislation that created the SCUSF, to advance the twin goals of  
6       universal service and local competition. As I described on pages 7-9 of my direct  
7       testimony, over-priced access charges had been a primary source of support for  
8       affordable basic telephone service in high-cost rural areas. By removing  
9       significant amounts of this support from intrastate access prices and replacing it  
10      with explicit support, as the SCUSF has done, not only has universal service been  
11      preserved, but a vibrant competitive market for long distance and local services  
12      has developed. Mr. Gillan's clients have chosen to serve the densely populated  
13      and lower-cost areas where the profit potential is the greatest – and that is their  
14      right. I believe that it is wrong, however, to make misleading statements in a  
15      manner that would directly harm the delivery of affordable services to the rural  
16      consumers that his client have chosen not to serve, while at the same time  
17      reducing the overall level of competition in the market for bundled services.

18

1   **Q.**    On page 12 of his reply testimony, Mr Gillan states that “only two public  
2           interest justifications have been offered for continuing to support bundles: 1)  
3           That without a subsidy, there would be a possible reduction in the number of  
4           bundles offered to rural consumers, and 2) That unless the RLEC has a  
5           subsidy, the RLEC will be competitively disadvantaged.” Is this statement  
6           correct?

7   **A.**    No it is not. While Mr. Gillan’s testimony focuses almost exclusively on bouts of  
8           verbal gymnastics with prior Commission orders and legislative language, he  
9           conveniently ignores the impact that eliminating support necessary for COLRs to  
10          serve their more rural customers, and restricting the ability of COLRs to offer  
11          service bundles that might compete with his clients’ bundled offerings would have  
12          on real consumers – both rural and urban. On page 4 of my direct testimony I  
13          summarize these public interest impacts as follows:

- 14          • Eliminating or restricting high-cost support to COLRs who offer service  
15             bundles or contracts would harm consumers in the higher-cost rural areas who  
16             rely on this funding to receive affordable basic telecommunications services.
- 17          • Restricting or dis-incenting the ability of COLRs to offer service bundles or  
18             contracts would be anticompetitive, would deprive consumers of the benefits  
19             of competition, and would allow competitive carriers to charge higher prices.
- 20          • Granting the request of certain parties to restrict or eliminate the ability of  
21             COLRs that offer service bundles to receive necessary SCUSF support would  
22             provide these parties with an unwarranted financial windfall at the expense of  
23             South Carolina consumers.

1 **IV. THE MORE DENSELY POPULATED AREAS WHERE MR. GILLAN'S**  
2 **CLIENTS SERVE ARE LESS COSTLY THAN THE MORE RURAL**  
3 **AREAS WHERE THEY HAVE CHOSEN NOT TO SERVE**  
4

5 **Q. Mr. Gillan challenges the validity of your claim that customers in more**  
6 **densely populated areas, such as towns, where his clients serve are less costly**  
7 **than remote rural areas where they do not serve. What is your reaction to**  
8 **his statements?**

9 **A.** I am surprised that he has taken this illogical position. On page 19 of his reply  
10 testimony, Mr. Gillan states "There are not now – and never have been – any cost  
11 studies in South Carolina's various proceedings used to determine the relative cost  
12 of different areas in the RLEC's service [sic] for purposes of the USF." It is only  
13 logical that a telephone network in areas where customers are located tens or  
14 hundreds of feet apart will be less costly, both to build and maintain, than an area  
15 where customers are located thousands of feet, or miles apart. Aside from any  
16 specific cost study, however, the RLECs' competitors have provided ample  
17 empirical evidence of where the costs are low and where costs are high. These  
18 competitors have voted with their feet. They have located in the densely  
19 populated areas where costs are low and the profit potential is high. They have  
20 not located in the sparsely populated areas where costs are high, and explicit  
21 universal service support is necessary to build and maintain telecommunications  
22 networks. To argue that there is no correlation between subscriber density and  
23 cost, as Mr. Gillan attempts to do in his testimony, is disingenuous and just plain  
24 wrong.



1   **Q.**    **Mr. Gillan goes on to say that the State USF fund does not make a distinction**  
2           **in disbursements between customers in densely-populated and sparsely-**  
3           **populated areas. Do you agree with this?**

4   **A.**    While the statement is true, the conclusion Mr. Gillan reaches is false. It is true  
5           that State USF is approved and distributed to RLECs on an average company-  
6           wide basis. However, this does not mean that the cost of providing service is the  
7           same for each customer and each line. Clearly, some customers are more costly to  
8           serve than others. As I more fully describe on pages 7 and 8 of my direct  
9           testimony, the higher costs of serving the more rural areas were historically  
10          recovered through higher recovery amounts from the Division of Revenues  
11          process. With the AT&T divestiture in 1984, these implicit supports were  
12          transferred directly into interstate and intrastate access charges, with the most  
13          costly and rural companies having the highest access charges. The primary  
14          purpose of the SCUSF was to remove this implicit support from intrastate access  
15          charges and replace it with sustainable explicit support from the Fund. The  
16          companies serving the most rural and costly regions of South Carolina receive the  
17          highest recovery from the SCUSF. Since a company will experience high average  
18          costs because of its higher-cost rural customers, it is entirely accurate to state that  
19          SCUSF is provided for the benefit of the high-cost rural consumer. As Ms. Hipp  
20          has clarified in her reply testimony, the SCUSF is stated on a "per-line" basis for  
21          purposes of allowing for the portability of funding to competitive COLRs.<sup>10</sup>

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<sup>10</sup> Hipp reply testimony at page 4, line 21.

1   **Q.    Does the competitive service provider have an opportunity to receive SCUSF**  
2       **support?**

3   **A.    Yes, however under the Commission's Guidelines and Administrative Procedures**  
4       **contained in Order No. 2001-996, a new entrant must first apply for COLR status.**

5   **V.    CONCLUSION**

6  
7   **Q.    Could you please summarize your surreply testimony?**

8   **A.    Mr. Gillan has relied on a number of factually incorrect assumptions to reach his**  
9       **conclusion that basic local exchange telephone service provided as a part of a**  
10      **bundled offering or contract should not be eligible for SCUSF support. He has**  
11      **also ignored the negative consequences that adopting his clients' self-serving**  
12      **positions would have on South Carolina consumers. Adopting his**  
13      **recommendations would harm both the provision of universal service and the**  
14      **amount of local competition in the State of South Carolina. His policy**  
15      **recommendations would not be in the public interest, and thus the Commission**  
16      **should conclude that basic local exchange telephone service provided as a part of**  
17      **a bundled or contract offering should remain eligible for SCUSF support.**

18   **Q.    Does this conclude your testimony at this time?**

19   **A.    Yes.**

20

BEFORE THE  
PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2009-326-C

State Universal Service Support of Basic     )  
Local Service Included in a Bundled         )  
Service Offering or Contract Offering        )

**SURREPLY TESTIMONY OF H. KEITH OLIVER**

1   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   **A.**   My name is H. Keith Oliver. My business address is 579 Stoney Landing Road,  
3       Moncks Corner, South Carolina 29461.

4   **Q.   ARE YOU THE SAME H. KEITH OLIVER WHO PREVIOUSLY FILED DIRECT**  
5       **TESTIMONY IN THIS PROCEEDING?**

6   **A.**   Yes, I am. I presented Direct Testimony on behalf of the South Carolina  
7       Telephone Coalition ("SCTC").

8   **Q.   WHAT IS THE PURPOSE OF THIS SURREPLY TESTIMONY?**

9   **A.**   The purpose of this Surreply Testimony is to respond on behalf of the SCTC to  
10       some of the incorrect assumptions and misstatements of fact contained in the  
11       Reply Testimony of Joseph Gillan, which was filed on behalf of South Carolina  
12       Cable Television Association, CompSouth, tw telecom of south carolina llc, and  
13       Nuvox Communications Incorporated (collectively referred to as the "CLECs").

1 **Q. DO YOU TAKE ISSUE WITH MR. GILLAN'S TESTIMONY IN GENERAL?**

2 **A.** Yes. Mr. Gillan's entire testimony is based on a false premise, i.e., that the  
3 incumbent local exchange carriers ("ILECs") are seeking to "expand" State USF  
4 to include support for deregulated services. His characterization is misleading  
5 and untrue.

6 **Q. WHY IS THIS PREMISE WRONG?**

7 **A.** First, no one is seeking to "expand" the State USF in this proceeding. Second,  
8 this Commission has specifically designed State USF to provide support for basic  
9 local exchange service, and no one in this proceeding is asking the commission  
10 to provide support to a deregulated service.

11 **Q. WHY DO YOU SAY THAT THERE IS NO EXPANSION OF THE STATE USF**  
12 **BEING SOUGHT IN THIS PROCEEDING?**

13 **A.** The high-cost portion of the State USF currently is less than 15% of the  
14 maximum size of the fund determined by the Commission in 2001. With AT&T's  
15 recent election to be regulated under a new statute enacted by the General  
16 Assembly earlier this year, the actual size of the State USF is shrinking. The  
17 high cost portion of the State USF was approximately \$51.0 million for the 2008-  
18 2009 fund year, and it is approximately \$46.4 million for the 2009-2010 fund year.  
19 The State USF will continue to decrease as AT&T phases out of State USF over  
20 the next two years. The State USF currently provides support for basic local  
21 service regardless of whether it is provided on a stand-alone basis or as part of a  
22 bundled or contract offering. The Commission is simply being asked to reaffirm  
23 that COLRs should continue to receive support for basic local exchange service

1 regardless of whether it is provided on a stand-alone basis or as part of a  
2 bundled or contract offering. The size of the fund will not increase as a result of  
3 that determination.

4 **Q. WHAT DO YOU MEAN WHEN YOU SAY THAT THE STATE USF IS**  
5 **SPECIFICALLY DESIGNED TO PROVIDE SUPPORT FOR BASIC LOCAL**  
6 **EXCHANGE TELEPHONE SERVICE?**

7 **A.** The State USF was sized by the Commission, pursuant to S.C. Code Ann. § 58-  
8 9-280(E)(4), based on the sum of the difference, for each carrier of last resort  
9 ("COLR"), between its cost of providing basic local exchange services and the  
10 maximum amount it may charge for the services. After extensive cost study  
11 hearings, the Commission established, for each COLR, the monthly cost of  
12 providing basic local exchange service in the COLR's service area. The  
13 Commission then deducted the maximum amount the COLR could charge for  
14 basic service (i.e., the Commission-approved tariff rate). This amount  
15 represented the amount of support needed by the COLR to cover the cost of  
16 providing basic local service. Before State USF was implemented, the support  
17 needed for basic local service was received from other services provided by the  
18 COLR (i.e., the support was "implicit" in rates for other services.) The point of  
19 USF is to move that support out of the rates for other services and into an explicit  
20 funding mechanism so that it remains available to support the provision of basic  
21 local service -- i.e., it is specific, predictable and sufficient, as required by federal  
22 universal service policies. See 47 U.S.C. § 254(b)(5) ("There should be specific,  
23 predictable and sufficient Federal and State mechanisms to preserve and

1 advance universal service.") State USF is not used to support any services other  
2 than basic local exchange telephone service.

3 **Q. WOULD GRANTING THE CLECS' REQUEST SIMPLY KEEP THE CURRENT**  
4 **STATE USF CONSTANT?**

5 **A.** No, that is clearly not the intent of the CLECs in bringing this issue before the  
6 Commission. In fact, Mr. Gillan himself previously testified that a very small  
7 percentage of customers (6% for BellSouth in 1994) subscribe only to basic local  
8 service. See Transcript of Proceedings in Docket No. 1997-239-C, July 17-20,  
9 2000 ("USF Transcript") at 1275-1276. Assuming the other 94% of customers  
10 receive bundled offerings, approval of this petition would all but eliminate state  
11 universal service funding.

12 **Q. MR. GILLAN APPEARS TO ATTACK THE STATE USF IN GENERAL AT PP.**  
13 **9-10 OF HIS TESTIMONY, SUGGESTING THAT THE STATE USF IS NOT**  
14 **OPERATING AS THE COMMISSION INTENDED. DO YOU AGREE?**

15 **A.** No. Much of Mr. Gillan's testimony appears to attack State USF in general,  
16 which is certainly beyond the scope of this proceeding. In any event, the  
17 Supreme Court of South Carolina clearly and unequivocally commended the  
18 Commission's comprehensive and detailed efforts in establishing and  
19 implementing the State USF in its current form. That is not an issue for today.  
20 However, it is interesting to note that Mr. Gillan's comments in this regard are  
21 similar to the testimony he presented on behalf of the Southeastern Competitive  
22 Carriers Association ("SECCA") in the proceeding held before the Commission in  
23 2000 to address implementation of the State USF. In his testimony in 2000, Mr.

1 Gillan likewise argued that the Commission had created an oversized fund, in  
2 large part because the Commission compared “the *full* cost of the network  
3 facilities (such as loop and local switch) used to serve a customer, to the  
4 revenues the ILEC receives from only *one* service (basic local rates).” See  
5 Transcript of Proceedings in Docket No. 1997-239-C, July 17-20, 2000 (“USF  
6 Transcript”) at 1274. Mr. Gillan went on to argue that “the ILECs claim that they  
7 need subsidy to even serve their most profitable customers – i.e., those  
8 customers that purchase more than basic local service, but also purchase other  
9 highly profitable add-ons.” See USF Transcript at 1274-75. As in the case  
10 before the Commission today, Mr. Gillan erroneously equates basic local service  
11 with stand-alone basic local service. That argument was rejected by the  
12 Commission then, as well as by the South Carolina Circuit Court and the  
13 Supreme Court of South Carolina on appeal by SECCA. In fact, in rejecting this  
14 argument, the Supreme Court of South Carolina specifically ruled that the  
15 Commission “selected an appropriate cost model and inputs that can produce  
16 reasonable cost estimates of providing universal service in South Carolina” and  
17 “did isolate the cost of providing basic local service.” Office of Regulatory Staff v.  
18 South Carolina Public Service Comm’n, 374 S.C. 46, at pp. 63 and 64 (2007).  
19 The similar arguments being made today should be rejected as well. This is  
20 particularly true in light of the General Assembly’s recent clear directive in the  
21 Customer Choice and Technology Investment Act of 2009 that: “For those LEC’s  
22 that have not elected to operate under this section, nothing contained in this  
23 section or any subsection shall affect the current administration of the state USF

1 nor does any provision thereof constitute a determination or suggestion that only  
2 stand-alone basic residential lines should be entitled to support from the state  
3 USF." S.C. Code Ann. § 58-9-576(C)(11) (emphasis added). That is exactly  
4 what Mr. Gillan is suggesting – *again* – and it should once again be rejected.

5 **Q. MR. GILLAN SUGGESTS THAT THE STATE USF IS A "TAX," AND THAT IT**  
6 **SOMEHOW SHIFTS REVENUES FROM THOSE WHO PAY THE TAX TO**  
7 **THOSE WHO RECEIVE BUNDLES. IS THIS ACCURATE?**

8 **A.** Not at all. Again, this is similar to arguments made by Mr. Gillan back in 2000 in  
9 opposition to the Commission's efforts to implement the State USF. In that  
10 testimony, Mr. Gillan argued that the State USF would result in a 34.7% "tax" on  
11 telecommunications consumers in South Carolina. See USF Transcript at pp.  
12 1270-71. The State USF uniform percentage surcharge today stands at less  
13 than 3.3%. Mr. Gillan is as wrong about the concept of USF being a tax as he  
14 was about the level of the surcharge. Mr. Gillan's argument that the State USF is  
15 a "tax," and that it somehow shifts revenues from those who pay the "tax" to  
16 those who receive bundles is completely inaccurate. First, the State USF is  
17 funded through a uniform percentage surcharge imposed on all end user retail  
18 telecommunications revenues in the state. The surcharge is specifically  
19 designated for State USF and it is not a tax, nor does it "shift" any revenues. All  
20 users of the network pay a small surcharge to ensure that the network is  
21 available for them to call whomever and wherever they may please. It directly  
22 benefits all users of the telephone network. The ubiquitous telephone network is  
23 a public benefit, and maintaining its viability is in the public interest. The fact is



1 all consumers benefit from a ubiquitous interconnected network. The problem is  
2 the cost of providing the network is not evenly distributed across the network.  
3 When understood in this manner, USF is simply the way costs are equalized  
4 across the network, thus matching cost to benefit. In other words, the universal  
5 service fund charge is simply an additive that takes the additional cost needed to  
6 provide the network in rural high cost areas and spreads it equitably across the  
7 entire network to all who use and benefit from the network.

8 **Q. MR. GILLAN STATES THAT IT IS NOT ONE OF THE GOALS OF STATE USF**  
9 **TO MAKE SURE THAT RATES AND SERVICES IN RURAL AREAS ARE**  
10 **COMPARABLE TO OTHER AREAS OF THE STATE, AS YOU STATED IN**  
11 **YOUR DIRECT TESTIMONY. HOW DO YOU RESPOND?**

12 **A.** Mr. Gillan is wrong. Reasonable comparability of rates and services in rural and  
13 urban areas is one of the basic principles of universal service upon which  
14 Congress directed the Federal-State Joint Board and the Federal  
15 Communications Commission to base their policies for the preservation and  
16 advancement of universal service. See 47 U.S.C. §§ 254(b), 254(b)(3). The  
17 South Carolina General Assembly directed the Commission to establish the State  
18 USF

19 [i]n continuing South Carolina's commitment to universally available  
20 basic local exchange service at affordable rates and to assist with  
21 the alignment of prices and/or cost recovery with costs, and  
22 consistent with applicable federal policies[.]  
23

24 S.C. Code Ann. § 58-9-280(E). The South Carolina Public Service Commission  
25 has always recognized and acted in furtherance of policies to encourage  
26 reasonable comparability of rates and services in urban and rural areas

1 throughout the state. The Commission's demonstrated commitment to this public  
2 policy is one of the main reasons we enjoy a reliable, high-quality  
3 telecommunications network, including access to advanced services, throughout  
4 the State of South Carolina today, at rates that are basically equivalent  
5 regardless of where in the state you live.

6 **Q. MR. GILLAN STATES THAT "EXPANDING THE USF TO PROVIDE SUBSIDY**  
7 **TO DEREGULATED BUNDLES" IS NOT IN THE PUBLIC INTEREST. HOW**  
8 **DO YOU RESPOND?**

9 **A.** As stated above, Mr. Gillan completely mischaracterizes what is at issue here.  
10 There is no "expansion" of the State USF being proposed, nor does the State  
11 USF provide funding for anything other than basic local exchange service. The  
12 real question is whether it is in the public interest to provide support to carriers of  
13 last resort for providing basic local exchange telephone service, regardless of  
14 whether the basic service is provided on a stand-alone basis or in a bundled or  
15 contract offering.

16 **Q. IS IT IN THE PUBLIC INTEREST TO PROVIDE UNIVERSAL SERVICE**  
17 **SUPPORT TO CARRIERS OF LAST RESORT FOR PROVIDING BASIC**  
18 **LOCAL EXCHANGE TELEPHONE SERVICE, REGARDLESS OF WHETHER**  
19 **THE BASIC SERVICE IS PROVIDED ON A STAND-ALONE BASIS OR IN A**  
20 **BUNDLED OR CONTRACT OFFERING?**

21 **A.** Yes, it is. That determination has already been made, and has been affirmed  
22 again and again. Commission-approved cost studies have clearly demonstrated  
23 that the cost of providing basic local exchange telephone service for rural

1 companies exceeds, and in many cases far exceeds, the maximum amount (i.e.,  
2 the Commission-approved tariff rate) that they can charge for that service. As  
3 the rates for competitive services like access, calling plans, etc., are forced  
4 downward by competition, the implicit support that these rates provide for basic  
5 local exchange telephone service is lost. That is the basic reason for the State  
6 USF. That reasoning does not change if the COLR provides other services along  
7 with the basic local service, which has always been the case and continues to be  
8 true. Bundled and contract offerings are simply a way to market services. They  
9 do not change the nature of the basic local exchange service. In fact, because  
10 the COLR is required by law to maintain a stand-alone tariff for the basic local  
11 service, the maximum rate the COLR can charge for that service remains capped  
12 at the tariffed rate. The customer can discontinue a bundled offering at any time  
13 and elect to receive basic local service under the tariff.

14 **Q. IF THE COMMISSION WERE TO GRANT THE CLECS' REQUEST, WHAT**  
15 **WOULD THE IMPACT BE ON THE RURAL TELEPHONE COMPANIES, THEIR**  
16 **CUSTOMERS, AND THE PUBLIC AT LARGE?**

17 **A.** First it should be understood that authorizing such a change would for all  
18 practical purposes eliminate State USF for companies like Home Telephone that  
19 are offering bundles and contracts. Without the receipt of State USF, rural  
20 carriers would have no choice but to terminate their COLR obligations and serve  
21 only geographical areas similar to those served by the cable companies and  
22 CLECs, where the rural local exchange carrier ("RLEC") can recover its cost. If

1 the RLEC were to offer service in the high cost portions of its service area, it  
2 would have to charge higher rates in order to recover its cost.

3 Thus, granting the CLECs' request would put the RLECs in an untenable  
4 position. The RLECs would essentially be forced to choose between offering  
5 bundles and contracts to customers or continuing to receive State USF. Either  
6 scenario would harm some portion of the RLEC's customer base. If the RLEC  
7 ceased to provide bundles and contracts in order to retain State USF, some  
8 customers would lose access to bundles completely. Other customers who  
9 might have bundles offered by cable companies or CLECs would likely see their  
10 rates increase as competition is reduced. In addition, the RLEC would lose  
11 access lines because customers who desire to purchase bundles would migrate  
12 to cable companies and CLECs that offer bundles. Since the RLEC would still be  
13 the COLR, it would be required to maintain the network necessary to serve  
14 current customers as well as these lost customers in the event they choose to  
15 return to the RLEC.

16 Alternatively, if the RLEC were effectively forced to give up State USF because it  
17 determined it was necessary to continue to offer bundles to customers, the RLEC  
18 would essentially be forced to terminate its COLR obligation so that service to  
19 high-cost customers could be terminated or rates increased to the point that  
20 service to high cost customers would allow the RLEC to recover its cost. Neither  
21 of these options are in the public interest. The only entities that would possibly  
22 gain from such a result are competitive carriers, who have no obligation to serve

1 anyone and are only seeking to gain a competitive advantage and to increase  
2 their own bottom lines.

3 **Q. YOUR COMMENTS SEEM TO INDICATE A CERTAIN TENSION WITH**  
4 **RESPECT TO COMPETITIVE CARRIERS BEING ALLOWED TO OPERATE IN**  
5 **PORTIONS OF RURAL TELEPHONE COMPANY SERVICE AREAS. WHAT**  
6 **ARE YOUR THOUGHTS ON THIS?**

7 **A.** There is an inherent tension there, which is exactly why Congress and the South  
8 Carolina General Assembly provided for both competitive markets and the  
9 preservation and advancement of universal service. Competitive carriers operate  
10 strictly under a competitive market business plan. They only serve where it is  
11 profitable to serve. There is nothing wrong with this business model; it is the  
12 foundation of the American economy. However, it is not the universal service  
13 model. In order to ensure all citizens have access to critical two-way  
14 communications services this nation has provided for a unique public/private  
15 partnership manifested in the operations of the universal service funds. It is clear  
16 the introduction of competition into only a small portion of a rural service area  
17 creates tensions. In fact, Time Warner recognized this when filing for authority to  
18 operate as a telecommunications provider in the service areas of five RLECs. As  
19 I stated at p. 25 of my direct testimony, it is interesting that at that time, Time  
20 Warner claimed that the State USF could be increased to mitigate any financial  
21 harm their entry might create. Now that they are competing within these limited  
22 areas they want to reduce or eliminate State USF.

1    **Q.    DO YOU HAVE ANY FINAL THOUGHTS IN THIS DOCKET?**

2    **A.**    Yes. I think it is important for the Commission to remember, at its core, this is a  
3           very narrow, straightforward case. The Commission is simply being asked to  
4           determine if South Carolina's high cost rural subscriber lines should continue to  
5           receive universal service funding when the subscriber purchases other services  
6           in conjunction with their basic local telephone service. In reality, these customers  
7           have always been purchasing multiple services; the only thing that changed is  
8           that the marketplace has moved to create a more formal combination of services  
9           we call bundles.

10          The practical effect of granting the CLECs' request would be to effectively  
11          eliminate state universal service funding thereby jeopardizing universal service  
12          within South Carolina.

13   **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

14   **A.**    Yes, it does.

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE:     State Universal Service Support of Basic Local     )  
             Service Included in a Bundled Service Offering     )  
             or Contract Offering                                     )  
             \_\_\_\_\_ )

**CERTIFICATE  
OF SERVICE**

I, Rebecca W. Martin, an employee with the McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of the attached Surreply Testimony of Glenn H. Brown and the attached Surreply Testimony of H. Keith Oliver in the above-referenced matter to the persons named below by causing said copies to be transmitted via electronic mail and by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

Patrick W. Turner, Esquire  
AT&T South Carolina  
Post Office Box 752  
Columbia, South Carolina 29202  
[pt1285@att.com](mailto:pt1285@att.com)

Steven W. Hamm, Esquire  
Richardson Plowden and Robinson, P.A.  
Post Office Drawer 7788  
Columbia, South Carolina 29202  
[shamm@rperclaw.com](mailto:shamm@rperclaw.com)

Scott Elliott, Esquire  
Elliott & Elliott, P.A.  
721 Olive Street  
Columbia, South Carolina 29205  
[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

Bonnie D. Shealy, Esquire  
Frank R. Ellerbe, III, Esquire  
Robinson, McFadden & Moore, P.C.  
Post Office Box 944  
Columbia, South Carolina 29202  
[fellerbe@robinsonlaw.com](mailto:fellerbe@robinsonlaw.com)  
[bshealy@robinsonlaw.com](mailto:bshealy@robinsonlaw.com)

John J. Pringle, Jr., Esquire  
Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, South Carolina 29202  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

William R Atkinson  
Sprint Communications Company L. P.  
3100 Cumberland Circle  
Atlanta, Georgia 30339  
[bill.atkinson@sprint.com](mailto:bill.atkinson@sprint.com)

Burnet R. Maybank III, Esquire  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, South Carolina 29202  
[bmaybank@nexsenpruet.com](mailto:bmaybank@nexsenpruet.com)

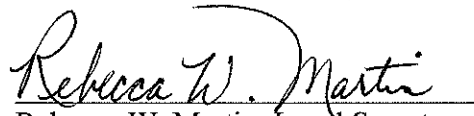
Susan S. Masterton, Esquire  
United Telephone Company of the  
Carolinas d/b/a Embarq  
1313 Blair Stone Road  
Tallahassee, Florida 32301  
[susan.masterton@embarq.com](mailto:susan.masterton@embarq.com)

Nanette S. Edwards, Esquire  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, South Carolina 29211  
[nsedwar@regstaff.sc.gov](mailto:nsedwar@regstaff.sc.gov)

Benjamin P. Mustian, Esquire  
John M.S. Hoefer, Esquire  
Willoughby & Hoefer, P.A.  
Post Office Box 8416  
Columbia, South Carolina 29202  
[bmustian@willoughbyhoefer.com](mailto:bmustian@willoughbyhoefer.com)  
[jhoefer@willoughbyhoefer.com](mailto:jhoefer@willoughbyhoefer.com)

Zel Gilbert  
Director, External Affairs  
Embarq Corporation  
1122 Lady Street, Suite 1050  
Columbia, South Carolina 29201  
[zel.gilbert@embarq.com](mailto:zel.gilbert@embarq.com)

Stan Bugner  
State Director  
Verizon South, Incorporated  
1301 Gervais Street, Suite 825  
Columbia, South Carolina 29201  
[stan.bugner@verizon.com](mailto:stan.bugner@verizon.com)

  
Rebecca W. Martin, Legal Secretary  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 753-3319

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Columbia, South Carolina